



THE CITY OF SAN DIEGO
MANAGER'S REPORT

DATE ISSUED: July 2, 2004 REPORT NO. 04-147

ATTENTION: Honorable Mayor and City Council
Docket of July 12, 2004

SUBJECT: Supplement Numbers Seven and Eight To The 1995 Agreement For
Partial Use And Occupancy Of San Diego Jack Murphy Stadium

SUMMARY

Issues: 1. Should the City Council authorize the City Manager to execute Supplement Number Seven to extend the negotiation period with the San Diego Chargers ("Chargers") through and including August 1, 2004?

2. Should the City Council authorize the City Manager to execute Supplement Number Eight to implement the term sheet authorized to be conveyed to the Chargers by the City Council on April 26, 2004 (the "Term Sheet")? Supplement Number Eight is intended to accomplish the following objectives:

- a) Eliminate the Attendance Guaranty immediately and permanently;
- b) Eliminate renegotiation rights;
- c) Keep the Chargers in San Diego at least through the 2008 NFL season;
- d) Obtain a substantial termination fee if the agreement is terminated before 2020;
- e) Resolve the litigation between the Chargers and the City; and,
- f) Provide the City and the Chargers with a foundation to explore a long-term solution for the Chargers to remain in San Diego, subject to voter approval.

Manager's Recommendation: 1. Authorize the City Manager to execute Supplement Number Seven to extend the negotiation period through and including August 1, 2004.

2. Authorize the City Manager to execute Supplement Number Eight to implement the Term Sheet authorized to be conveyed to the Chargers by the City Council on April 26, 2004.

Other Recommendations: None

Fiscal Impact: This action does not increase City expenditures related to the Chargers' use and occupancy of Qualcomm Stadium. For a detailed explanation of the fiscal impact of the proposed supplement, please see the discussion below.

BACKGROUND

On May 30, 1995 the City and Chargers Football Company, a California limited partnership (as predecessor-in-interest to the Chargers) entered into the 1995 Agreement for Partial Use and Occupancy of San Diego Jack Murphy Stadium (the "Agreement"), a copy of which is on file in the Office of the City Clerk as Document Number OO-18182-1. Pursuant to the Agreement, the City agreed to make certain improvements (the "Improvements") to the San Diego Jack Murphy Stadium, now known as Qualcomm Stadium (the "Stadium"). In order to facilitate completion of the Improvements, the City and the Chargers entered into Supplement Number One to the Agreement dated as of April 7, 1997.

On July 23, 2002 the City appointed a Citizens' Task Force on Chargers Issues (the "Task Force") to, among other things, determine what can be done "to keep the Chargers in San Diego in a fiscally responsible way that the public will support." In order to give the Task Force ample time to complete its work prior to the commencement of the renegotiation process under the Agreement, the parties entered into Supplement Number Two to the Agreement dated January 28, 2003.

On March 4, 2003, pursuant to the terms of the Agreement, the Chargers delivered to the City a notice invoking the renegotiation provisions of the Agreement (the "Renegotiation Notice"). The City has not acknowledged whether the Renegotiation Notice was valid or invalid. The delivery of the Renegotiation Notice, however, commenced a ninety (90) day negotiation period during which the City and Chargers were to negotiate for an amendment to the Agreement to address a defined set of circumstances. In order to extend the length of such negotiation period by an additional ninety (90) calendar days, the City and the Chargers entered into Supplement Number Three to the Agreement dated May 20, 2003. Subsequent to Supplement Number Three, the City and the Chargers have entered into three additional supplements (numbers Four, Five and Six) that collectively extended the length of the negotiation period through July 15, 2004.

On November 25, 2003, the Chargers filed a lawsuit against the City in the Superior Court for the County of Los Angeles entitled *Chargers Football Company, LLC v. City of San Diego*, seeking a declaration that the Renegotiation Notice was valid. The case was subsequently transferred to the Superior Court for the County of San Diego and the City filed a cross

complaint seeking, among other things, a declaration that the Renegotiation Notice was not valid (collectively, the “Litigation”).

The negotiations between the City and the Chargers have resulted in a proposed agreement that modifies a number of the provisions of the Agreement, the approval of which would settle the Litigation.

DISCUSSION

The body of this report focuses on the terms of Supplement Number Eight, which is to be approved by the introduction and adoption of an ordinance. In order to accommodate the timeline required for a first and second reading, the negotiation period should be extended to and including August 1, 2004. Supplement Number Seven, also before the City Council for consideration, provides for that extension. If the ordinance authorizing the execution of Supplement Number Eight is introduced, the City Council should approve the resolution authorizing the execution of Supplement Number Seven.

The approval and execution of Supplement Number Eight will preclude the need for the Litigation. Accordingly, the ordinance authorizing the execution of Supplement Number Eight also conveys to the City Manager the authority to execute an appropriate mutual release and settlement agreement to the Litigation.

Following is a summary of the substantive provisions of Supplement Number Eight which appear in the order set forth in the Term Sheet.

A. Pending Litigation

Recital E contemplates that upon the execution of Supplement Number Eight the City and the Chargers will enter into a separate agreement to settle and dismiss the Litigation.

B. Term and Early Termination

Section 1.4 addresses the term of the Agreement and certain rights the Chargers will have to terminate the Agreement prior to the end of the 2020 NFL football season.

(1) Term.

(a) The Chargers covenant to play all home games at the Stadium through the 2020 NFL season subject to clearly defined early termination rights.

(b) If the Chargers breach this covenant the remedies of specific performance and injunctive relief are available to the City.

(2) Early Termination

(a) The Chargers have the right to terminate the Agreement any time after the 2008 NFL season by:

(i) Delivering a notice to the City.

(ii) Simultaneously tendering the applicable fee as set forth below without deduction, offset or credit of any kind.

<u>Early Termination Notice</u>		<u>Termination Fee:</u>
<u>Delivered On or Between:</u>		
2/1/2009	and 5/1/2009	\$56,275,000
2/1/2010	and 5/1/2010	54,670,000
2/1/2011	and 5/1/2011	25,820,000
2/1/2012	and 5/1/2012	23,980,000
2/1/2013	and 5/1/2013	22,015,000
2/1/2014	and 5/1/2014	19,900,000
2/1/2015	and 5/1/2015	17,630,000
2/1/2016	and 5/1/2016	15,195,000
2/1/2017	and 5/1/2017	12,575,000
2/1/2018	and 5/1/2018	9,760,000
2/1/2019	and 5/1/2019	6,740,000
2/1/2020	and 5/1/2020	3,490,000

Note: This schedule differs slightly from that set forth in the approved Term Sheet to more accurately reflect the outstanding balance of the City's bonds in 2009 and 2010, and the declining balance of the Chargers' obligation thereafter.

(iii) If the Chargers exercise the early termination right, the City will receive the appropriate termination fee and the City will retain the debt service reserve account for the Stadium bonds (\$5.8 million).

(b) Payment of the termination fee is an absolute, unconditional obligation of the Chargers—payable even if the City breaches the Agreement.

(c) The Chargers also have the right to terminate the Agreement without payment of a termination fee in two limited circumstances where the Stadium becomes uninhabitable:

(i) Dangerous Condition. If after the 2009 NFL season (commencing January 1, 2010) a condition exists at the Stadium that poses an immediate threat to the public health, safety or welfare and ten percent (10%) or more of the seats become uninhabitable; and

(ii) Damage. If at any time during the Agreement ten percent (10%) or more of the seats in the Stadium become uninhabitable as a result of physical damage (e.g. by fire, earthquake or other casualty).

(d) In both uninhabitability circumstances:

(i) the determination of uninhabitability must be made by an arbitration panel and upheld on appeal in order for the Chargers to avoid payment of the termination fee; and

(ii) the City has the right to remediate the uninhabitable conditions and preclude the Chargers from terminating the Agreement.

(e) If the Chargers allege an uninhabitable condition, the Chargers have the right to play home games at another facility pending the determination of uninhabitability by the arbitration panel; however the Agreement remains in full force and effect.

C. Renegotiation Rights.

Section 31 of the Agreement (Renegotiation Rights) has been eliminated and replaced with certain provisions regarding exclusivity (see paragraph G, below).

D. Attendance Guaranty.

Section 1.2 deletes the Attendance Guaranty provisions of the Agreement in their entirety.

E. Rent (Including Post-Season).

The Chargers will pay rent for the regular season and for any post-season in accordance with the schedule set forth in the Term Sheet, as set forth below, on a game by game basis, reduced by credits the City is obligated to give the Chargers pursuant to the settlement of the ADA litigation over the Stadium, and other currently existing credits. The Chargers shall continue to receive all net revenues from Chargers' home games, including the City's rights to any concessions revenues from Chargers' home games.

(a)	NFL Season	Rent
	2004 – 2012	\$2.5 Million
	2013 – 2016	\$3.0 Million
	2017 – 2020	\$4.0 Million
(b)	Post Season	10% of gross gate receipts

F. Maintenance.

(1) The City remains obligated to maintain the Stadium throughout the term of Agreement.

(2) Specific maintenance items are set forth in the Agreement but the amount spent on maintenance remains in the discretion of the City.

(3) The “state-of-the art” standard contained in the Agreement is eliminated.

(4) If the City fails to properly maintain the Stadium, the Chargers have a right to commence an arbitration and seek early termination of the Agreement; however,

(a) The Chargers remedies are limited to specific performance and injunctive relief;

(b) The City has the right to cure any maintenance default; and

(c) Even if the Chargers are permitted to terminate the Agreement, the Chargers must pay the termination fee for the year in which termination occurs.

(5) The Chargers have limited rights to perform emergency and home game routine maintenance on behalf of the City and seek reimbursement.

G. Exclusivity.

(1) Chargers and their key owners, members, officers and directors, their agents and affiliates are prohibited from negotiating or entering into any agreement concerning relocation prior to January 1, 2007. Minority owners and other employees acknowledge and agree in writing that they are not authorized and are precluded from any such negotiations.

(2) A course of conduct is set forth for the Chargers to deal with inquiries and relocation proposals prior to January 1, 2007.

(3) The Chargers are permitted to participate in NFL meetings and to vote on resolutions dealing with relocation of other teams or in general, but are prohibited from participating in NFL meetings where relocation of the Chargers is a topic.

(4) The City agrees not to sue the NFL and its other member clubs for their dealings with the Chargers concerning relocation, but the Chargers remain liable for their dealings with the NFL if the non-negotiation covenant is breached.

(5) For breach of the exclusivity provision, the City is entitled to:

(a) specific performance and injunctive relief; and

(b) \$3.0 million in liquidated damages for each Charger breach (per “Metropolitan Statistical Area”) to a maximum of \$15.0 million.

H. Long Term Stadium Development Option. The City and the Chargers will confer on the development and financing of a new stadium but neither party is obligated. Any agreed upon proposal will be subject to a vote of the public.

I. Training Facilities. The Chargers existing contractual arrangements preclude relocation of training facilities to San Diego in the near term.

J. Franchise Name. The Chargers will "predominantly use" San Diego in public pronouncements, subject to NFL rules.

K. Dispute Resolution.

(1) All disputes under the Agreement are subject to an expedited arbitration process (including appellate review).

(2) In disputes involving the physical condition of the Stadium, at least two of the three arbitrators must have construction or engineering training.

Summary

Supplement Number Seven is an extension to the existing negotiation period, which expires on July 15, 2004, to and including August 1, 2004 to allow adequate time for the introduction and adoption of the ordinance authorizing execution of Supplement Number Eight. Supplement Number Eight is the result of negotiations between the City and the Chargers, consistent with the Term Sheet. The agreement is intended to accomplish the following objectives:

1. Eliminate the Attendance Guaranty immediately and permanently;
2. Eliminate renegotiation rights;
3. Keep the Chargers in San Diego at least through the 2008 NFL season;
4. Obtain a substantial termination fee if the agreement is terminated before 2020;
5. Resolve the litigation between the Chargers and the City; and
6. Provide the City and the Chargers with a foundation to explore a long-term solution for the Chargers to remain in San Diego, subject to voter approval.

Approval of Supplement Number Eight by City Council and execution by the City Manager will provide for the settlement and dismissal of the Litigation. It is recommended that Supplement Number Eight be introduced, and that Supplement Number Seven be adopted.

ALTERNATIVE

Do not introduce Supplement Number Eight, and do not adopt Supplement Number Seven.

Respectfully Submitted,

Bruce A. Herring
Deputy City Manager

Attachments: 1. [Supplement Number Seven](#)
2. [Supplement Number Eight](#)

**SUPPLEMENT NUMBER SEVEN TO THE
1995 AGREEMENT FOR PARTIAL USE AND OCCUPANCY
OF SAN DIEGO JACK MURPHY STADIUM**

between

**CHARGERS FOOTBALL COMPANY, LLC
a California limited liability company**

and

**THE CITY OF SAN DIEGO,
a municipal corporation**

DATED: as of July __, 2004

**SUPPLEMENT NUMBER SEVEN TO THE
1995 AGREEMENT FOR PARTIAL USE AND OCCUPANCY OF
SAN DIEGO JACK MURPHY STADIUM**

THIS SUPPLEMENT NUMBER SEVEN TO THE 1995 AGREEMENT FOR PARTIAL USE AND OCCUPANCY OF SAN DIEGO JACK MURPHY STADIUM (“**Supplement Number Seven**”) is made and entered into as of July __, 2004, at San Diego California, by and between the CITY OF SAN DIEGO, a municipal corporation (the “**City**”), and the CHARGERS FOOTBALL COMPANY, LLC, a California limited liability company (the “**Chargers**”).

RECITALS

A. On May 30, 1995 the City and Chargers Football Company, a California limited partnership (as predecessor-in-interest to the Chargers) (the “**Partnership**”) entered into the 1995 Agreement For Partial Use And Occupancy Of San Diego Jack Murphy Stadium, a copy of which is on file in the Office of the City Clerk as Document Number OO-18182-1 (the “**Original Agreement**”). Pursuant to the Original Agreement, the City agreed to make certain improvements (the “**Improvements**”) to San Diego Jack Murphy Stadium now known as Qualcomm Stadium (the “**Stadium**”).

B. In order to facilitate the completion of the Improvements, the City and the Partnership entered into that certain Supplement Number One To The 1995 Agreement For Partial Use And Occupancy Of San Diego Jack Murphy Stadium, dated as of April 7, 1997 (“**Supplement Number One**”).

C. The City appointed a Citizens’ Task Force on Chargers Issues (the “**Task Force**”) to, among other things, determine what can be done “to keep the Chargers in San Diego in a fiscally responsible way that the public will support.” In order to give the Task Force ample time to complete its work prior to the commencement of the renegotiation process under the Agreement, the parties entered into that certain Supplement Number Two To The 1995 Agreement For Partial Use And Occupancy Of San Diego Jack Murphy Stadium, dated as of January 28, 2003 (“**Supplement Number Two**”).

D. On March 4, 2003, the Chargers delivered a Renegotiation Notice to the City (the “**March Renegotiation Notice**”). The ninety (90) day negotiation period referenced in Paragraph (b)(ii) and the first clause of the first sentence of Paragraph (b)(iii) of Section 31 of the Agreement commenced on March 4, 2003. In order to extend the length of such negotiation period in the aggregate to and including July 15, 2004, the parties entered into those certain Supplement Numbers Three, Four, Five and Six To The 1995 Agreement For Partial Use And Occupancy Of San Diego Jack Murphy Stadium, (“**Supplement Number Three**”, “**Supplement Number Four**”, “**Supplement Number Five**” and “**Supplement Number Six**”). The Original Agreement, as supplemented by Supplement Number One, Supplement Number Two, Supplement Number Three, Supplement Number Four, Supplement Number Five and

Supplement Number Six is hereinafter referred to as the “**Agreement.**” All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

E. The parties now desire to further supplement the Agreement to extend the negotiation period to and including August 1, 2004.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Chargers and the City hereby agree as follows:

1. Modifications to the Agreement.

The Chargers and the City hereby agree that notwithstanding anything to the contrary in Section 31 of the Agreement, with respect to the March Renegotiation Notice only:

Paragraph (b)(ii) of Section 31 of the Agreement is hereby deleted and replaced with the following:

(b)(ii) Upon the delivery of a Renegotiation Notice, the parties hereto shall negotiate in good faith for a seventeen month period to and including August 1, 2004, (the “**Negotiation Period**”) to agree upon mutually acceptable terms for an amendment to this Agreement to offset the impact on the Chargers of the Triggering Event; provided, however, that neither party shall be precluded from conducting negotiations with third parties during the Negotiation Period. If the parties hereto reach an agreement within the Negotiation Period, they shall execute and deliver an amendment hereto immediately after reaching such agreement and in any event not later than ten (10) Business Days after the end of the Negotiation Period. If the parties do not reach an agreement within the Negotiation Period, then subparagraph (iii) below shall apply.

The first sentence of Paragraph (b)(iii) of Section 31 of the Agreement is hereby deleted and replaced with the following:

(b)(iii) If, within the eighteen (18) month period following the end of the Negotiation Period provided for in subparagraph (ii) above, the Chargers execute a letter of intent providing for the Chargers’ use of another stadium with any third party, the Chargers shall offer the City a ninety (90) calendar day period after the execution of such letter of intent within which to execute an amendment hereto which matches the financial and overall economic terms of the proposed third party transaction as set forth in such letter of intent.

2. General Provisions.

2.1 **Effect of Supplement.** In the event of any inconsistency between the Agreement and this Supplement Number Seven, the terms of this Supplement Number Seven shall prevail. Except as expressly set forth herein, the terms and conditions of the Agreement and the rights and obligations of the parties shall remain unmodified and in full force and effect. The Agreement, as supplemented and modified by this Supplement Number Seven, represents the

entire agreement between the parties hereto with respect to the subject matter thereof and supersedes all other written and oral agreements with respect to such subject matter.

2.2 **Governing Law.** This Supplement Number Seven shall be construed in accordance with, and the transactions described herein shall be governed by, the laws of the State of California as to all issues, including, without limitation, issues of validity, interpretation, effect, performance and remedies.

2.3 **Amendments.** This Supplement Number Seven may not be amended or modified, except in writing signed by both of the parties hereto.

2.4 **Headings.** Section headings used herein are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Supplement Number Seven.

2.5 **Counterparts.** This Supplement Number Seven may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, and all of which shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, this Supplement Number Seven is executed as of the date first written above by The City of San Diego, acting by and through its City Manager, pursuant to Resolution No. _____, authorizing such execution, and by the Chargers.

THE CITY OF SAN DIEGO

By: _____
P. Lamont Ewell
City Manager

CHARGERS FOOTBALL COMPANY, LLC,
a California limited liability company

By: _____
Dean A. Spanos
President – CEO

I HEREBY APPROVE the form and legality of the foregoing Supplement Number Seven this ____ day of July, 2004.

CASEY GWINN, City Attorney

By: _____
Leslie J. Girard
Assistant City Attorney

Attachment 2

**SUPPLEMENT NUMBER EIGHT TO THE
1995 AGREEMENT FOR PARTIAL USE AND OCCUPANCY
OF SAN DIEGO JACK MURPHY STADIUM**

between

**CHARGERS FOOTBALL COMPANY, LLC
a California limited liability company**

And

**THE CITY OF SAN DIEGO,
a municipal corporation**

DATED: July __, 2004

**SUPPLEMENT NUMBER EIGHT TO THE
1995 AGREEMENT FOR PARTIAL USE AND OCCUPANCY OF
SAN DIEGO JACK MURPHY STADIUM**

THIS SUPPLEMENT NUMBER EIGHT TO THE 1995 AGREEMENT FOR PARTIAL USE AND OCCUPANCY OF SAN DIEGO JACK MURPHY STADIUM (“Supplement Number Eight”) is made and entered into on July ___, 2004, at San Diego, California, by and between the CITY OF SAN DIEGO, a municipal corporation (the “City”), and the CHARGERS FOOTBALL COMPANY, LLC, a California limited liability company (the “Chargers”).

RECITALS

A. On May 30, 1995 the City and Chargers Football Company, a California limited partnership (as predecessor-in-interest to the Chargers) (the “Partnership”) entered into the 1995 Agreement for Partial Use And Occupancy Of San Diego Jack Murphy Stadium, a copy of which is on file in the Office of the City Clerk as Document Number OO-18182-1 (the “Original Agreement”). Pursuant to the Original Agreement, the City agreed to make certain improvements (the “Improvements”) to San Diego Jack Murphy Stadium now known as Qualcomm Stadium (the “Stadium”).

B. In order to facilitate the completion of the Improvements, the City and the Partnership entered into that certain Supplement Number One To The 1995 Agreement For Partial Use And Occupancy Of San Diego Jack Murphy Stadium, dated as of April 7, 1997 (“Supplement Number One”).

C. The City appointed a Citizens’ Task Force on Chargers Issues (the “Task Force”) to, among other things, determine what can be done “to keep the Chargers in San Diego in a fiscally responsible way that the public will support.” In order to give the Task Force ample time to complete its work prior to the commencement of the renegotiation process under the Original Agreement, the Parties (as defined below) entered into that certain Supplement Number Two To The 1995 Agreement For Partial Use And Occupancy Of San Diego Jack Murphy Stadium, dated as of January 28, 2003 (“Supplement Number Two”).

D. On March 4, 2003, the Chargers delivered a Renegotiation Notice to the City (the “March Renegotiation Notice”). The ninety (90) day negotiation period referenced in Paragraph (b)(ii) and the first clause of the first sentence of Paragraph (b)(iii) of Section 31 of the Original Agreement commenced on March 4, 2003. In order to extend the length of such negotiation period by an additional ninety (90) calendar days, the Parties entered into that certain Supplement Number Three To The 1995 Agreement For Partial Use And Occupancy Of San Diego Jack Murphy Stadium, dated as of May 20, 2003 (“Supplement Number Three”). In order to extend the length of such negotiation period by an additional eight (8) months beyond the extension date agreed in Supplement Number Three, the Parties entered into that certain Supplement Number Four To The 1995 Agreement For Partial Use And Occupancy Of San Diego Jack Murphy Stadium, dated as of August 7, 2003 (“Supplement Number Four”). In order to extend the length of such negotiation period by an additional forty-five (45) days beyond the

extension date agreed in Supplement Number Four, the Parties entered into that certain Supplement Number Five To The 1995 Agreement For Partial Use And Occupancy Of San Diego Jack Murphy Stadium, dated as of April 26, 2004 ("Supplement Number Five"). In order to extend the length of such negotiation period by an additional thirty (30) days beyond the extension date agreed in Supplement Number Five, the Parties entered into that certain Supplement Number Six To The 1995 Agreement For Partial Use And Occupancy Of San Diego Jack Murphy Stadium dated as of June 15, 2004 ("Supplement Number Six"). In order to extend the length of such negotiation period to and including August 1, 2004, the Parties entered into that certain Supplement Number Seven To The 1995 Agreement For Partial Use And Occupancy Of San Diego Jack Murphy Stadium dated as of July ____, 2004 ("Supplement Number Seven"). The Original Agreement, as supplemented by Supplement Number One, Supplement Number Two, Supplement Number Three, Supplement Number Four, Supplement Number Five, Supplement Number Six and Supplement Number Seven is hereinafter referred to as the "Agreement" and the Agreement as supplemented by this Supplement Number Eight is hereinafter referred to as the "New Agreement". All references to "this Agreement" that appear within this Supplement Number Eight (each of which is a provision that will become part of the New Agreement) shall mean and refer to the New Agreement. All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the New Agreement.

E. The Chargers and the City are currently parties to that certain lawsuit identified as Chargers Football Company, LLC, a California limited liability company, Plaintiff v. The City of San Diego, a municipal corporation, Defendant, in the Superior Court of the State of California, County of San Diego, Case Number GIC 824587 (the "Lawsuit"). The Chargers and the City intend to enter into a settlement of the Lawsuit and dismiss the Lawsuit.

F. As a material inducement to the settlement and dismissal of the Lawsuit, the Chargers and the City have agreed to modify the Agreement in certain particulars and agree that, except as expressly provided herein, the terms and conditions of the Agreement and the rights and obligations of the Parties shall remain unmodified and in full force and effect.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Chargers and the City hereby agree as follows:

1. Modifications to the Agreement.

The Chargers and the City hereby agree to the following modifications to the Agreement:

1.1 Revisions to Certain Definitions. Section 1 of the Agreement is hereby modified by deleting, adding and modifying certain definitions as follows:

1.1.1 Definitions Added. The following definitions are hereby added to Section 1 of the Agreement:

"AAA" is defined in Section 32(a) of this Agreement.

"ADA Indemnity Letter" means the letter dated March 24, 2000 from the Chargers to the City pursuant to which the City has acknowledged its obligation under this

Agreement to indemnify the Chargers against certain liabilities that arose with respect to the Americans With Disabilities Act.

“Affiliate” is defined in Section 31(a) of this Agreement.

“Ancillary Agreement” means any written agreement (regardless of the form thereof) between the City and the Chargers or an affiliate of the Chargers (including but not limited to Associates) relating in any way to the use or occupancy of the Stadium or the Stadium Premises by the Chargers, other than the ADA Indemnity Letter. The Ancillary Agreements include, without limitation, the Signage Agreement entered into as of March 24, 2000 and the First Amendment thereto entered into as of October 4, 2001 by and among the Chargers, the City and Padres, L.P., the 1995 Skybox Agreement dated May 30, 1995, the Facilities Occupancy Agreement dated May 30, 1995, and the Agreement Conveying Naming Rights to Stadium dated May 13, 1997.

“Arbitration Notice” is defined in Section 32(a) of this Agreement.

“Arbitrator” and “Arbitrators” are defined in Section 32(a) of this Agreement.

“Concession Agreement” means the concession agreement between Concessionaire and the City with respect to concessions at the Stadium, the Third Amendment to which is on file with the City Clerk as document Number 00-18227-1 or any successor agreement thereto that provides for concession sales at the Stadium during Home Games.

“Concessionaire” means Volume Services America Holdings, Inc. d/b/a Centerplate, f/k/a Service America Corporation or any successor concessionaire under the Concession Agreement.

“Direct Concession Revenue” means all amounts required to be paid directly to the City by Concessionaire pursuant to the Concession Agreement with respect only to Home Games played at the Stadium.

“Early Termination Notice” is defined in Section 4(b) of this Agreement.

“Improvement Bonds” means the Taxable Lease Revenue Bonds, Series 1996A (San Diego Jack Murphy Stadium) of the Public Facilities Financing Authority of the City of San Diego.

“Parties” means, collectively, the City and the Chargers, and “Party” shall mean either of the Parties.

“Post Season Rental” is defined in Section 8(b) of this Agreement.

“Presiding Arbitrator” is defined in Section 32(a) of this Agreement.

“Rules” is defined in Section 32(a) of this Agreement.

“San Diego Superior Court” is defined in Section 32(a) of this Agreement.

“Termination Fee” is defined in Section 4 (c) of this Agreement.

“Ticket Payment” is defined in Section 8(c) of this Agreement.

“Timetable” is defined in Section 4(d) of this Agreement.

“Uninhabitable Conditions” is defined in Section 4(d) of this Agreement.

“Uninhabitable Notice” is defined in Section 4(d) of this Agreement.

“Uninhabitable Response” is defined in Section 4(d) of this Agreement.

“Uninhabitable Termination Notice” is defined in Section 4(d) of this Agreement.

1.1.2 Definitions Deleted. The following definitions are hereby deleted from Section 1 of the Agreement:

“Actual Attendance Shortfall”

“Attendance Shortfall”

“Attendance Shortfall Amount”

“Attendance Shortfall Differential”

“CBA”

“Defined Gross Revenues”

“Excluded Games”

“Federal Securities”

“Guaranty Period”

“Qualified Paid Attendance”

“Renegotiation Notice”

“Team Salary Cap”

“Termination Date”

“Total Guaranteed Attendance”

“Triggering Event”

“Triggering Year”

1.1.3 Definitions Modified. Each of the following definitions set forth in Section 1 of the Agreement is hereby amended and restated in its entirety to read as follows:

“Home Game” means any League Game, Pre-Season Game or Post-Season Game to be played by the Chargers for which the Chargers are designated as the home team according to applicable NFL rules and procedures.

“NFL” shall mean the National Football League, or the successor thereto of which the Chargers are a member club at any time during the term of this Agreement, irrespective of the name by which said football league is known or denominated.

“Post-Season Game” shall mean any wildcard game, division or conference championship game or other game played by the Chargers (for which the Chargers are designated as the home team according to applicable NFL rules and procedures) following the completion of the scheduled season to determine the participants in the Super Bowl.

“Pre-Season” shall mean the period from the first regularly scheduled Pre-Season Game to and including the last regularly scheduled Pre-Season Game, as established by the annual schedule of the NFL.

“Pre-Season Game” shall mean any football game commonly referred to within the NFL as a “pre-season” or “exhibition” game, to be played by the Chargers, that is not a League Game, and with respect to which the Chargers are designated as the home team according to applicable NFL rules and procedures, but excluding up to one special exhibition game per year played outside the United States.

“Regular Football Season” shall mean the period from the first League Game to the last regularly scheduled League Game of the Chargers in the Stadium Premises as established by the annual schedule of the NFL, including Post-Season Games, but excluding the Super Bowl. Where the phrase “Regular Football Season” is preceded by reference to a year, the reference shall be deemed to be a reference to the Regular Football Season beginning in the stated year. For example, “2013 Regular Football Season” shall mean the Regular Football Season beginning in 2013.

“Trade-Outs” shall mean those tickets to any Post-Season Game that are exchanged by the Chargers for specific goods, materials, or services that do not generate revenues that will be shared by the City; provided, however, that “Trade-Outs” shall not include any promotional or participant tickets offered by the Chargers irrespective of whether such promotional or participant tickets are traded for goods, materials or services that do not generate revenues that will be shared by the City, provided the number of Trade-Outs shall not exceed the number of such promotional and participant tickets the Chargers are permitted to distribute pursuant to then current NFL policies.

1.2 City Guaranty. Section 9 of the Agreement is hereby deleted in its entirety. Exhibit F to the Agreement is hereby deleted in its entirety.

1.3 Renegotiation Rights. Section 31 of the Agreement and its caption are hereby deleted and replaced with the following:

31. Negotiations to Relocate Franchise.

(a) Prior to January 1, 2007, neither the Chargers acting through an Affiliate (as defined below) nor any member of the Chargers owning more than a three percent (3%) membership interest in the Chargers, manager of Chargers Football Company, LLC, officer (excluding only the Chief Marketing Officer, Vice President of Football Operations and Executive Vice President and General Manager) or any member of a board of directors of or Special Counsel to the Chargers, any person or entity controlling, controlled by or under common control with any of the foregoing, or any attorney, representative or agent of the Chargers with actual authority from any of the foregoing (any of the preceding an “Affiliate”) shall engage in any discussions, communications or negotiations, preliminary or otherwise, over the terms and conditions of a Chargers' relocation to any stadium or facility not in the City, including, but not limited to, stadium financing, lease or other proposed transaction terms. Prior to January 1, 2007 the Chargers shall not enter into an agreement with any third party, public entity, developer, or the NFL (or any third party acting as agent for any of the foregoing), concerning relocation of the Chargers to any stadium or facility not in the City. Within thirty (30) days after the effective date of this Agreement, the Chargers shall deliver to each of the members and officers of the Chargers not included in the foregoing definition of Affiliate, a letter explicitly stating that he or she is not authorized to negotiate on behalf of the Chargers concerning relocation and instructing each of them to refrain from any discussion or communications with third parties concerning relocation of the Chargers. Receipt, understanding and agreement with the terms of such letters shall be acknowledged in writing by each recipient and copies of each fully signed letter shall be provided to the City. If the Chargers send a letter to person(s) affiliated with a prospective stadium site or facility not in the City relating to the Chargers' obligations with respect to relocation under this Section 31(a), the Chargers will send a true and correct courtesy copy of each such letter to the City; however, failure to send such copy shall not result in any penalty or right on the part of the City to claim damages.

(i) Provided that neither the Chargers nor any Affiliate has solicited the offer or communication, if the Chargers (or any Affiliate) are approached by any party concerning relocation, it shall not be a breach of the covenant in the preceding paragraph for the Chargers (or any Affiliate) to inform that party, without elaboration or other discussion, that the Chargers are not able to relocate prior to the end of the 2008 Regular Football Season and are not able to negotiate, discuss or communicate, with respect to relocation, prior to January 1, 2007;

(ii) it shall not be a breach of the covenant in the preceding paragraph for the Chargers or any Affiliate to receive offers, solicitations or other communications from third parties concerning the possibility of relocating the Franchise to another stadium or facility not in the City, provided that, (A) neither the Chargers nor any Affiliate has solicited any offer,

solicitation or other communication, (B) after ascertaining the nature of any written offer, solicitation or communication, the Chargers provide written notice thereof to the City and return to the sender all documents that constitute such offer, solicitation or communication and (C) with respect to all such offers, solicitations or communications, the Chargers do not directly or indirectly engage in any further negotiations with such third parties;

(iii) it shall not be a breach of the covenant in the preceding paragraph for the Chargers or any Affiliate to attend and participate in NFL owners' meetings or committee meetings at which relocation and/or the building or financing of and lease terms for stadiums are topics or to vote on proposed resolutions relating thereto (provided that the Chargers or any such Affiliate are not present during and do not participate in any discussions at such meetings or vote on proposed resolutions that specifically relate to relocation of the Chargers); neither shall it be deemed a breach, in and of itself, if, after such resolutions have been adopted and assuming full compliance by the Chargers with the provisions of this Section 31(a), the Chargers subsequently do relocate to a stadium or facility pursuant to lease terms that previously had been approved by such resolutions; and

(iv) it shall not be a breach of the covenant in the preceding paragraph for the Chargers or any Affiliate to comment on the potential relocation of the Chargers in a general manner (e.g. state that the Chargers will probably relocate if a new stadium is not built in the City or that the Chargers may consider relocating at some future time) or to make perfunctory statements (e.g. thanking representatives of a potential relocation site for their interest or stating that the Chargers may consider a potential relocation site after January 1, 2007).

The term "communications" as used in this Section 31(a) shall include without limitation making any offer (even if conditional, non-binding or revocable in any manner), responding to any offer (other than as expressly set forth above), or providing information concerning any possible relocation. The term "relocation" as used in this Section 31(a) shall be deemed to include any action that might limit or preclude the obligation of the Chargers to play their Home Games in the Stadium Premises before or after the 2008 Regular Football Season.

If the Chargers breach this Section 31(a), then, subject to Section 31(b) of this Agreement, (C) the City shall be entitled (in addition to the liquidated damages set forth in the following Clause (B)) to specific performance and injunctive relief and (D) the Chargers shall be obligated to pay to the City immediately the sum of Three Million Dollars (\$3,000,000) per breach, in cash or other immediately available, funds (which payment shall not reduce or affect in any manner the Chargers obligation to pay a Termination Fee pursuant to Section 4 of this Agreement). A breach of this Section 31(a) shall be determined

with reference to a Metropolitan Statistical Area ("MSA") as defined by the Federal Office of Management and Budget for use by federal statistical agencies and as delineated in the Sales and Marketing Management's 2003 Survey of Buying Power and Media Markets and, regardless of the number of prospective stadium sites within a MSA or the number of communications, conversations or writings upon which a claim of breach is based, only one breach per MSA shall be deemed to have occurred hereunder. The Chargers' maximum liability for all claims of liquidated damages under this Section 31(a), regardless of the number of breaches, shall not cumulatively exceed Fifteen Million Dollars (\$15,000,000). The City shall not be entitled to prove or recover any other damages of any kind or nature whatsoever for breach of this Section 31(a).

THE PARTIES AGREE THAT BASED UPON THE CIRCUMSTANCES NOW EXISTING, KNOWN AND UNKNOWN, IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO ESTABLISH THE CITY'S DAMAGE BY REASON OF THE CHARGERS' BREACH OF THIS SECTION 31(a). ACCORDINGLY, THE PARTIES AGREE THAT IT WOULD BE REASONABLE AT SUCH TIME TO AWARD THE CITY "LIQUIDATED DAMAGES" FOR EACH BREACH IN THE AMOUNT OF \$3,000,000. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE FOREGOING AMOUNT IS REASONABLE AS LIQUIDATED DAMAGES AND SHALL BE THE CITY'S SOLE AND EXCLUSIVE DAMAGE REMEDY IN LIEU OF ANY OTHER DAMAGE REMEDY AT LAW (BUT NOT IN LIEU OF SPECIFIC PERFORMANCE AND INJUNCTIVE RELIEF) TO WHICH THE CITY MIGHT OTHERWISE BE ENTITLED BY REASON OF THE CHARGERS' BREACH OF THIS SECTION 31(a). NO PERSON OTHER THAN THE CITY SHALL HAVE ANY RIGHTS AS A THIRD PARTY BENEFICIARY OF THIS AGREEMENT TO CLAIM LIQUIDATED DAMAGES FOR A BREACH BY THE CHARGERS OF THIS SECTION 31(a).

City's Initials

Chargers' Initials

(b) If the City notifies the Chargers in writing that the City has cause to believe (which cause shall be described with reasonable specificity in such notice) that there has been a breach of Section 31(a) of this Agreement, and if the Chargers provide the City (within twenty (20) calendar days thereafter) with an affidavit of Dean Spanos (or if Dean Spanos is no longer an officer of the Chargers, then his successor as CEO/President) in which Dean Spanos (or his successor) declares, under penalty of perjury, both individually and on behalf of the Chargers, that such matters (that gave rise to the City's belief of a breach) are not true, that there has been no breach of Section 31(a) of this Agreement, and that no Affiliate of the Chargers has knowledge of the alleged breach, then, if the City elects to pursue such breach with the filing of a complaint or giving of an Arbitration Notice, the City shall be required to prove such

breach with written documentation or communications from, or procured by and communicated to, the Chargers or an Affiliate, copies of which must be attached to the complaint or Arbitration Notice. A third party affidavit or unilateral memorandum, by itself, shall not qualify as written documentation or communications. Delivery of such affidavit to the City shall be in the sole discretion of the Chargers and Dean Spanos (or his successor). No inference shall be drawn from the Chargers electing or not electing to use this affidavit process, and the fact that the Chargers elect not to use this affidavit process shall not be admissible as evidence in any judicial or arbitration proceeding.

(c) The City understands and acknowledges that the NFL, as part of its business, assesses potential NFL markets and otherwise generally engages in activities relating to team location, relocation and stadium construction and renovation on behalf of itself and its member clubs. The City further acknowledges that the NFL is currently assessing the Los Angeles, California market with the intent of relocating an existing but, as of the date hereof, undesignated NFL franchise to, or establishing a de novo expansion franchise in, that market. The City hereby agrees that the NFL shall not be liable to the City with respect to any such activities. Accordingly, the City hereby waives and shall not assert any claim (based on any theory of liability whatsoever, whether in tort or contract, by statutory liability or common law) against the NFL (including its member clubs other than the Chargers, any entity affiliated with the NFL, and any officer, director, shareholder, partner, owner, or employee of any of the foregoing) seeking legal or equitable relief as a result of any dealings of the NFL with the Chargers. The City also acknowledges and agrees that the NFL (including its member clubs other than the Chargers) is a third party beneficiary entitled to directly assert the protections and waivers afforded in this Section 31(c); the absolute waiver of such claims is not limited in any manner by the failure to enumerate herein any claim or theory of liability. Further, if the City, notwithstanding the foregoing waiver, seeks any legal or equitable relief against the NFL (including its member clubs other than the Chargers) based on or relating in any way to the dealings of the NFL (including its member clubs other than the Chargers) with the Chargers, agrees that such matter shall be subject to arbitration at the election of the NFL (including its member clubs other than the Chargers). Nothing in this paragraph shall be construed to limit in any way the Chargers' liability for dealing with the NFL (including its member clubs other than the Chargers) in breach of Section 31(a) of this Agreement.

(d) On or after January 1, 2007, the Chargers shall have the right to negotiate and enter into an agreement with any third party for the Chargers' use of a stadium or facility not in the City for any Regular Football Season or portion thereof after the end of the 2008 Regular Football Season. In connection therewith, the Chargers and the City

acknowledge and agree that negotiation or execution of an agreement by the Chargers on or after January 1, 2007, with respect to the relocation of the Franchise after the end of the 2008 Regular Football Season to any stadium or facility not in the City, shall not be a breach of this Agreement. The City hereby waives the right to assert against the Chargers or any such third party any claim for damage or liability (based on any theory of liability whatsoever, whether in tort or contract, by statutory liability or common law) or to seek injunctive relief, with respect to any such negotiations that occur, or agreement that is executed, between the Chargers and any third party on or after January 1, 2007; the absolute waiver of such claims is not limited in any manner by the failure to enumerate herein any claim or theory of liability. Further, even if negotiations leading up to a third party agreement commence prior to January 1, 2007, the City shall not be entitled to enjoin or prohibit the Chargers from relocating the Franchise after the end of the 2008 Regular Football Season. However, if the Chargers breach the covenant set forth in this Section 31(d), then the provisions of Section 31(a) (except (C) thereof) and 31(b) shall apply to such breach.

1.4
following:

Term. Section 4 of the Agreement is hereby deleted and replaced with the

(a) Term. Subject to the early termination provisions in Sections 4(b), 4(d) and 4(e) of this Agreement, the term of this Agreement shall be for each Pre-Season and Regular Football Season during the period commencing with the first Home Game which shall be scheduled for the Stadium in August, 1995 and extending to and including the last day of the 2020 Regular Football Season. If the Chargers breach this provision, then the City shall be entitled (in addition to all other legal and equitable remedies available under this Agreement) to specific performance and injunctive relief. The Chargers shall have no “holdover” or other rights after any termination of this Agreement, except as expressly provided in Section 4(f) of this Agreement. Except in strict accordance with the provisions of this Section 4(a), Sections 4(b) through 4(e) below, and Section 20 (in conjunction with Section 4(b)), the Chargers hereby waive any right to terminate this Agreement pursuant to any other provision of this Agreement, including, without limitation, any City default under Section 25(c), based upon or with respect to any breach of any provision of this Agreement by the City. In addition, the fact that the Stadium may or may not be built to or in compliance with the 2004 Uniform Building Code as adopted by the City shall not render the Stadium uninhabitable or constitute a basis for finding an Uninhabitable Condition pursuant to Section 4(d) below. Likewise, if the Stadium is uninhabitable because an Uninhabitable Condition is determined by arbitration pursuant to Section 32(a) hereof to exist, the fact that evidence demonstrates that the Stadium is not built to the requirements of the 2004 Uniform Building code shall not relieve the City of its responsibilities under Section 4(d).

(b) Right of Termination. The Chargers shall have the right to terminate this Agreement following the conclusion of the 2008 Regular Football Season as set forth in this Section 4(b). In any calendar year beginning in 2009 and thereafter through the term of this Agreement, the Chargers may terminate this Agreement by providing written notice (“Early Termination Notice”) to the City no earlier than February 1 and no later than May 1 of the calendar year in which the Chargers seek to terminate this Agreement. Any Early Termination Notice received by the City either before February 1 or after May 1 shall not be effective. If the Chargers provide a timely Early Termination Notice to the City as set forth in this Section 4(b), then the Chargers shall peaceably surrender to the City any premises occupied by it (and/or its affiliates) pursuant and subject to the terms of this Agreement or any Ancillary Agreement, no later than July 31 of the calendar year in which the Early Termination Notice is provided to the City, and this Agreement and all Ancillary Agreements shall terminate as of such date. Concurrent with the delivery of an Early Termination Notice, the Chargers shall tender to the City in cash or other immediately available funds the applicable Termination Fee (as defined in Section 4(c) below), in addition to any other consideration due the City pursuant to this Agreement or any Ancillary Agreement, without deduction, offset or credit of any kind. Any Early Termination Notice delivered without concurrent tender of the applicable Termination Fee, whether or not otherwise timely pursuant to this Section 4(b) shall be ineffective, null and void. The Chargers’ right to terminate this Agreement as provided in this Section 4(b) shall be unconditional, and shall not be invalidated, nullified, suspended, delayed or enjoined for any reason including, but not limited to, an actual or alleged breach of any provision of this Agreement by the Chargers (other than the Chargers’ obligation to pay the Termination Fee as set forth in Section 4(c), below).

(c) Termination Fee. Except as set forth in Section 4(d), and subject to Section 4 (e) below, if this Agreement is terminated for any reason (notwithstanding any other provision of this Agreement or right or remedy of any Party) prior to the end of the 2020 Regular Football Season, including, without limitation, pursuant to either Section 4(b) or Section 4(e) of this Agreement, then the Chargers shall pay to the City, as additional consideration above and beyond any other consideration or amounts payable by the Chargers under this Agreement, without deduction, offset, or credit of any kind, the relevant amount, in cash or other immediately available funds, shown in the following table (the “Termination Fee”), which Termination Fee relates to the Improvement Bonds:

<u>Early Termination Notice Delivered</u> <u>On or Between:</u>		<u>Termination Fee:</u>
2/1/2009	and 5/1/2009	\$56,275,000

<u>Early Termination Notice Delivered</u>		<u>Termination Fee:</u>
<u>On or Between:</u>		
2/1/2010	and 5/1/2010	54,670,000
2/1/2011	and 5/1/2011	25,820,000
2/1/2012	and 5/1/2012	23,980,000
2/1/2013	and 5/1/2013	22,015,000
2/1/2014	and 5/1/2014	19,900,000
2/1/2015	and 5/1/2015	17,630,000
2/1/2016	and 5/1/2016	15,195,000
2/1/2017	and 5/1/2017	12,575,000
2/1/2018	and 5/1/2018	9,760,000
2/1/2019	and 5/1/2019	6,740,000
2/1/2020	and 5/1/2020	3,490,000

Such Termination Fee shall be paid in cash or other immediately available funds on or before the actual date of such termination, except in the event of a termination pursuant to Section 4(b) of this Agreement, in which event the Chargers' payment of the Termination Fee shall be in accordance with Section 4(b) of this Agreement. Except as set forth in Section 4(d) below, the Chargers' obligation to pay the Termination Fee shall be unconditional, and shall not be invalidated, nullified, suspended, delayed, eliminated, or enjoined for any reason whatsoever, including without limitation an actual or alleged breach of any provision of this Agreement by the City.

(d) Conditional Termination for Uninhabitability Without Termination Fee. The Chargers shall have the right to terminate this Agreement as provided in this Section 4(d), without paying a Termination Fee, if (1) at any time during the term of this Agreement after January 1, 2010 it is determined by arbitration in accordance with Section 32(a) of this Agreement (including appellate review as set forth therein) that, solely because of the condition set forth in Section 4(d)(i) below; and (2) at any time during the term of this Agreement solely because of the condition set forth in Section 4(d)(ii) below (the "Uninhabitable Conditions") and for no other reason, including without limitation, a breach by the City of any provision of this Agreement, the Stadium is uninhabitable (or enough seats in the Stadium are rendered unusable such that the combined current ticket prices for the unusable seats equals or exceeds ten percent (10%) of the combined current ticket prices for all seats in the Stadium). The Parties agree that the term "uninhabitable" assumes a degree of permanence and that the condition causing such uninhabitability requires remediation and does not apply to temporary uninhabitability due to an imminent but passing threat, such as fire or flood, the results of which do not cause the Stadium to become uninhabitable. For purposes of this Section 4(d), "current ticket prices" shall mean the ticket prices in effect on the date of the Uninhabitability Notice (as defined below).

(i) Dangerous Condition. An immediate threat to the public health, safety and welfare exists at the Stadium which renders the Stadium (or enough seats in the Stadium are rendered unusable such that the combined current ticket prices for the unusable seats equals or exceeds ten percent (10%) of the combined current ticket prices for all seats in the Stadium) unsafe to the public for the playing or exhibition of NFL games, as determined by arbitration in accordance with Section 32(a) of this Agreement (including appellate review as set forth therein), and the City fails to comply (or commence to comply and thereafter diligently complies) with such arbitration determination on or before twenty (20) days following such arbitration determination (including such appellate review).

(ii) Damage. If Damage occurs which renders the Stadium (or enough seats in the Stadium are rendered unusable such that the combined current ticket prices for the unusable seats equals or exceeds ten percent (10%) of the combined current ticket prices for all seats in the Stadium) unusable for the playing or exhibition of NFL games and the City fails to restore the Stadium thereafter (within the time frames set forth in Section 20 of this Agreement), as determined by arbitration in accordance with Section 32(a) of this Agreement (including appellate review as set forth therein).

(iii) Chargers' Notice and Remediation Request. If the Chargers believe that an Uninhabitable Condition exists, the Chargers may deliver to the City a notice (the "Uninhabitability Notice") setting forth a short, plain statement of the condition or circumstances that the Chargers contend constitute an Uninhabitable Condition, and a demand to remediate the same. The Chargers shall not be required to include any specific plans or specifications for such remediation with the Uninhabitability Notice. Provided the Uninhabitability Notice contains a short, plain statement of the condition or circumstances that the Chargers contend constitute an Uninhabitable Condition and a general demand to remediate the same, the Uninhabitability Notice shall be deemed to be sufficient notice concerning said condition, and the City shall not assert, nor shall the arbitrators entertain, any claim that the Uninhabitability Notice is insufficient in any respect.

(iv) City Uninhabitability Response. The City shall within fourteen (14) Business Days after delivery of the Uninhabitability Notice respond to the Chargers in writing (the "Uninhabitability Response"). The Uninhabitability Response shall contain each of the following statements, as applicable:

1. The City shall acknowledge or deny that the condition described in the Uninhabitability Notice exists.

2. If the City denies in the Uninhabitability Response that the condition described in the Uninhabitability Notice exists, the Chargers may demand arbitration in accordance with Section 32(a) of this Agreement (including appellate review as set forth therein) to determine the existence of such condition and if such condition constitutes an Uninhabitable Condition.

3. If the City acknowledges in the Uninhabitability Response that the condition described in the Uninhabitability Notice exists, the City shall further acknowledge or deny that the condition described in the Uninhabitability Notice constitutes an Uninhabitable Condition.

4. If the City acknowledges in the Uninhabitability Response that the condition described in the Uninhabitability Notice exists and that it constitutes an Uninhabitable Condition, the City shall elect to either remediate the Uninhabitable Condition, or to terminate this Agreement without the Chargers being required to pay a Termination Fee.

5. If the City acknowledges in the Uninhabitability Response that the condition described in the Uninhabitability Notice exists, but the City does not acknowledge that such condition constitutes an Uninhabitable Condition, the City shall state either (a) that the City agrees to remediate the condition, notwithstanding the fact that the City does not acknowledge that the condition constitutes an Uninhabitable Condition, or (b) demand an arbitration pursuant to Section 32(a) of this Agreement (including appellate review as set forth therein) to determine if an Uninhabitable Condition exists.

If the City elects to terminate this Agreement as provided in paragraph 4 above, this Agreement shall terminate upon the Chargers' receipt of the City's Uninhabitability Response. If the City agrees to remediate the condition described in the Uninhabitability Notice, the City shall, within fourteen (14) Business Days after delivery of the Uninhabitability Response to the Chargers, deliver to the Chargers a written remediation plan together with a timetable for completion of the remediation ("Timetable"). With respect to Damage, the provisions of Section 20 (in conjunction with Section 4(b)) of this Agreement shall apply. The Chargers shall have the right to commence an arbitration pursuant to Section 32(a) of this Agreement to determine the reasonableness of the Timetable or Damage Estimate; however, the filing of any such arbitration shall not delay commencement of remediation by the City.

(v) Completion of Remediation. If the Uninhabitability Response sets forth the City's agreement to remedy the condition described in the Uninhabitability Notice, the City shall promptly commence to remediate such condition, and shall thereafter continuously, expeditiously and diligently pursue the remediation to a proper and workmanlike

completion. If the City agrees or commences to remediate a condition described in the Uninhabitability Notice and thereafter ceases continuously, diligently and expeditiously to pursue proper and workmanlike completion of the remediation, then, notwithstanding anything to the contrary in this Agreement, the Chargers may commence an arbitration pursuant to Section 32(a) of this Agreement to determine whether the City has, in fact, failed or ceased to continuously, expeditiously and diligently pursue completion of the remediation. If an arbitration commenced pursuant to the preceding sentence determines that the City, in fact, failed or ceased to continuously, expeditiously and diligently pursue completion of the remediation, the Chargers may terminate this Agreement by written notice to the City and shall not be required to pay the Termination Fee. If, notwithstanding the diligent and expeditious pursuit of the completion of the remediation, the City fails to properly complete such remediation in a workmanlike manner within thirty (30) calendar days after the expiration of the time period set forth in the Damage Estimate or Timetable (whichever is applicable), then, notwithstanding anything to the contrary in this Agreement, the Chargers may terminate this Agreement effective upon delivery of written notice to the City and the Chargers shall not be required to pay the Termination Fee.

(vi) Substitute Facilities. (1) From and after the date of the Uninhabitability Notice through the date of an arbitration determination pursuant to Section 32(a) of this Agreement (including appellate review as set forth therein), and (2) after determination by agreement of the Parties or by arbitration pursuant to Section 32(a) of this Agreement (including appellate review as set forth therein), that an Uninhabitable Condition exists, so long as such Uninhabitable Condition exists and remediation remains uncompleted, the Chargers shall have the right to elect to play its Home Games at another location of its choice and this Agreement shall remain in full force and effect.

(vii) City Rejection. If (1) the City fails to deliver an Uninhabitability Response to the Chargers within fourteen (14) Business Days after delivery by the Chargers to the City of the Uninhabitability Notice, or (2) the City's Uninhabitability Response fails to expressly state that the City agrees to undertake remediation of the condition described in the Uninhabitability Notice or to demand arbitration pursuant to Section 4(d)(iv), above, then the City shall be deemed to have rejected the Chargers' request for remediation as set forth in the Uninhabitability Notice.

(viii) Uninhabitability Termination Procedures: If the City rejects the Chargers' request for remediation as set forth in the Uninhabitability Notice, or if the City, having undertaken or agreed to undertake remediation, thereafter does not continuously, diligently and expeditiously pursue proper and workmanlike completion of the remediation within the

timeframe set forth in Section 4(d)(iv) above, or the City fails to timely comply with an arbitration determination, the Chargers may deliver a notice (the “Uninhabitability Termination Notice”) to the City and the Chargers shall conclusively be deemed to owe no Termination Fee or any damages or other payment to the City with respect to termination of this Agreement pursuant to the Uninhabitability Termination Notice.

(e) Special Early Termination With Termination Fee. Upon any material breach by the City of the provisions of Section 11(a) of this Agreement (which breach does not result in an Uninhabitable Condition), as determined by arbitration in accordance with Section 32(a) of this Agreement (including appellate review as set forth therein), and provided that the City fails to cure (or commence to cure and thereafter diligently cure) such breach on or before twenty (20) days following such arbitration determination (including such appellate review), the Chargers shall have the right to terminate this Agreement by so notifying the City on or before thirty (30) days following the expiration of such cure period (which notice must be accompanied by payment of the Termination Fee for the calendar year in which any such termination occurs as set forth in Section 4(c) of this Agreement; for any such termination that is effective prior to calendar year 2009, the applicable Termination Fee shall be the Termination Fee applicable to a termination during calendar year 2009 (\$56,275,000). Termination of this Agreement by the Chargers pursuant to this Section 4(e) shall not be limited to the time periods set forth in Section 4(b) of this Agreement and shall be effective upon the giving of such termination notice (with payment of the Termination Fee) by the Chargers to the City.

(f) Holdover Right. In the event of an early termination of this Agreement by the Chargers pursuant to either Section 4(d) or 4(e) hereof, the Chargers shall have up to ninety (90) days to peaceably surrender to the City any premises occupied by it (and/or its affiliates) pursuant to the terms of this Agreement or any Ancillary Agreement.

1.5 Payments to the City. Section 8(b) of the Agreement is hereby deleted and replaced with the following:

(b) Payments to the City. During the term of this Agreement the Chargers shall pay the following, as consideration to the City for use and occupancy of the Stadium, without deduction, offset or credit of any kind, except as expressly set forth in Section 8(c) below and paragraph 2 of this Supplement Number Eight:

(i) Regular Football Season. Notwithstanding anything to the contrary contained in this Agreement, the maximum aggregate consideration (excluding any Termination Fee and amounts customarily paid to the City pursuant to existing agreements for services (e.g. police) provided by the City for Home Games) payable by the Chargers to the City under the Agreement for use and occupancy of the Stadium, not

including any Post-Season Rental (as defined in Section 8(b)(ii) below), shall be: \$2,500,000.00 for each Regular Football Season beginning with the 2004 Regular Football Season through and including the 2013 Regular Football Season; \$3,000,000.00 for each Regular Football Season beginning with the 2014 Regular Football Season through and including the 2016 Regular Football Season; and, \$4,000,000.00 for each Regular Football Season beginning with the 2017 Regular Football Season through and including the 2020 Regular Football Season. If a Force Majeure Event shall prevent the Chargers from using the Stadium for any Home Game during a Regular Football Season, the maximum aggregate consideration for that Regular Football Season shall be reduced by an amount equal to such maximum aggregate consideration multiplied by a fraction the numerator of which is the total number of Home Games which such Force Majeure Event prevented the Chargers from playing at the Stadium during that Regular Football Season, and the denominator of which is the total number of Home Games which could have been played at the Stadium during that Regular Football Season, but for the occurrence of the Force Majeure Event.

(ii) Additional Payment For Post-Season Games. In addition to the consideration set forth in Section 8(b)(i) of this Agreement, for each Post-Season Game played at the Stadium, the Chargers shall pay, without deduction, offset, or credit of any kind, as consideration to the City, a dollar amount (the “Post Season Rental”) equal to ten percent (10%) of the total of (1) all dollar amounts paid to the Chargers or to any person or entity authorized to receive the same on behalf of the Chargers from any source for admission to Post-Season Games less amounts actually refunded to ticket purchasers and amounts paid as taxes; and (2) the imputed dollar value of all Trade-Outs.

1.6 Payment of Consideration. Section 8(c) and the last sentence of Section 11(e) of the Agreement is hereby deleted and replaced with the following:

The consideration in respect of the Regular Football Season shall be paid to the City in the following manner:

(i) a ticket payment equal to one dollar and fifty cents (\$1.50) per admission ticket sold to each Home Game (the “Ticket Payment”).

(ii) all Direct Concession Revenue paid to the City by the Concessionaire.

Payments in respect of Direct Concession Revenue shall be credited against the aggregate consideration payable by the Chargers to the City as and when the Concessionaire pays the same to the City. The City shall make available to the Chargers such documents as may be reasonably necessary to permit the Chargers to confirm the amount of Direct

Concession Revenue payable to the City, including without limitation, delivering to the Chargers within thirty (30) days following each Home Game a copy of each statement or accounting showing the amount of Direct Concession Revenue payable to the City and the amount of Direct Concession Revenue remitted to the City. If and to the extent that the City fails to enforce reasonably its right of collection of Direct Concession Revenue from the Concessionaire, then the Chargers (after giving written notice to the City and twenty (20) days thereafter for the City to enforce its right of collection) shall have the right, on behalf of the City, to enforce such right of collection. The Chargers shall have a continuing interest in Direct Concession Revenue and the right to receive credit for or reimbursement of any such amounts, regardless of the passage of time or the contractual relationship (or absence thereof) between the Chargers and the City at the time the City receives a payment of Direct Concession Revenue. Payments in respect of the Ticket Payment shall be paid by the Chargers to the City not later than the date that is thirty (30) Business Days following each Home Game. Notwithstanding the foregoing, in no event shall the Chargers be required to make payments to the City from these two sources that, in the aggregate, exceed the maximum aggregate consideration payable by the Chargers in respect of a Regular Football Season pursuant to Section 8(b)(i). In the event the sum of the Ticket Payment and the Direct Concession Revenue actually received by the City exceeds the maximum aggregate consideration payable by the Chargers in respect of a Regular Football Season pursuant to Section 8(b)(i), the City shall remit such excess to the Chargers not later than the date that is thirty (30) Business Days following the date such excess payment is first discovered, but in any event not later than thirty (30) Business Days following the end of each Regular Football Season. In the event the sum of the Ticket Payment and the Direct Concession Revenue is less than the maximum aggregate consideration payable by the Chargers in respect of a Regular Football Season pursuant to Section 8(b)(i), the Chargers shall pay to the City an amount equal to such shortfall not later than the date that is thirty (30) Business Days following the end of each Regular Football Season.

In addition to the foregoing, payments in respect of the Post-Season Rental shall be paid by the Chargers to the City not later than the date that is thirty (30) Business Days following each Home Game.

1.7 Characterization of Consideration. Section 8 of the Agreement is hereby supplemented by adding the following as Section 8(f):

(f) Characterization of Consideration. The aggregate consideration payable by the Chargers to the City pursuant to Section 8(b) of this Agreement shall be deemed to comprise (i) a dollar amount equal to one dollar and fifty cents (\$1.50) for each admission ticket sold to each Home Game, and (ii) an amount equal to the Premium Amount received by the

Chargers in respect of club seats or other premium seat pricing at the Stadium.

1.8 Maximum Payment Obligation. Section 8 of the Agreement is hereby supplemented by adding the following as Section 8(g):

(g) Maximum Payment Obligation. Except as set forth in Section 8(b) hereof, the Chargers shall have no other payment obligations to the City for use and occupancy of the Stadium (excluding amounts customarily paid to the City for services (e.g. police) provided by the City for Home Games) and, subsequent to the date of this Supplement Number Eight, the Chargers shall be entitled to retain all other amounts otherwise received by the Chargers and remitted to the City pursuant to the Agreement prior to the date of this Supplement Number Eight. These amounts include, without limitation, amounts received in respect of ticket revenues, parking, concessions and novelties from Home Games, suite or skybox licenses and signage. In addition, the Chargers shall be entitled to receive and retain (i) all other amounts payable by the Chargers and credited to the Chargers against the consideration payable pursuant to the Agreement prior to the date of this Supplement Number Eight, including, without limitation, credits with respect to Qualcomm parking passes, Qualcomm Suite 9B, parking pass printing and property taxes, reimbursement of skybox maintenance expenses pursuant to the 1995 Skybox Agreement, and (ii) payments from any other source generated as a result of the Chargers' use and occupancy of the Stadium including, without limitation, any payments received in connection with a concession agreement or extension or amendment thereto entered into subsequent to the date of this Supplement Number Eight.

The Chargers hereby acknowledge and agree that the Chargers are subject to the terms of the Concession Agreement. The City shall not amend the economic terms of the Concession Agreement in any material respect without first obtaining the agreement of the Chargers. The City shall use commercially reasonable efforts in negotiating any new concession agreement or any extension or amendment thereto relating to the Stadium or Stadium Premises, which is entered into by the City after the date of this Supplement Number Eight, to maximize concession revenues at the Stadium and to obtain economic terms which are no less favorable to the Chargers (as a third party beneficiary thereof) than those in effect during the last full Regular Football Season under the agreement or agreements in place immediately preceding the effective date of such new agreement, amendment or extension. Notwithstanding the preceding sentence, the City does not guarantee any such economic terms for the Chargers. In particular, the City may elect to have the concessionaire provide equipment or otherwise contribute funds to be used at the Stadium which may decrease concession revenue for the Chargers and other users of the Stadium. In no event shall the City treat the Chargers differently than any

other tenant or event sponsor (including the City) at the Stadium with respect to the allocation of concession revenue.

The Chargers hereby acknowledge and agree that amounts received by the Chargers from any advertiser that relate to the 2003 Regular Football Season shall be governed by the existing Signage Agreement, as amended. The City acknowledges that the Chargers shall be entitled to retain any and all amounts received by the Chargers from any advertiser after March 1, 2004 for signage rights.

1.9 City Covenants. Section 11(a) of the Agreement is hereby deleted and replaced with the following Sections 11(a) and (b), and the remaining subsections of Section 11 shall be relettered accordingly:

(a) Routine Maintenance of Stadium and Stadium Premises. The City shall maintain the Stadium and Stadium Premises (including, without limitation, the playing field, all concession facilities, scoreboards, signage, Parking Facilities, club seating and lounge areas, skyboxes and related seating, permanent and temporary seats and seating arrangements, locker rooms and press and media facilities, the stadium club, elevators and escalators and all equipment, pipes, plumbing, wiring, gas and electric fittings used in connection therewith) in clean, safe and good order, condition and repair, suitable for the playing of professional NFL football games by the Chargers, ordinary wear and tear excepted. By way of illustration, such maintenance shall include, without limitation, the following: (i) removing all waste from inside clubs, suites, and any other gathering areas; (ii) sweeping all areas with brooms; (iii) once waste is removed, washing down all levels (except when there is a previous day event in the Stadium; (iv) power washing (immediately prior to and once during each Regular Football Season) all levels with standing water being pushed to lower levels; (v) cleaning suites by vacuuming, window washing, mopping, etc.; (vi) cleaning the club level of the Stadium (the "Club Level") by vacuuming, window washing, mopping, etc.; (vii) cleaning and maintaining all restrooms (by a staff of not less than 50 persons), and cleaning other areas, locker rooms, field, and food service areas; (viii) groundskeeping; (ix) performing irrigation and water runoff operations; (x) regularly performing preventative maintenance for HVAC, plumbing, mechanical, electrical and structural systems, including but not limited to periodic cleaning, lubrication, and changing of air filters and lights; (xi) touch-up painting; (xii) maintaining the electronic scoreboard, Friars Road marquee and jumbotrons in working order; (xiii) replacing rubber tile from time to time as necessary (e.g. where torn, weathered, bubbling, or otherwise dysfunctional); (xiv) patching concrete joint leaks as they occur; (xv) addressing plumbing issues as they occur (including, if necessary, having plumbers available for Home Games) including, but not limited to, elimination of all game day clogs, and replacing pipes where necessary; maintaining heaters and boilers in working order; (xvi)

regularly treating for vermin (e.g. roaches, rats, etc.); (xvii) regularly maintaining elevators in working order, including without limitation, having an elevator mechanic on site at Home Games; (xviii) installing new carpet (of equal or greater quality to the existing carpet in its new condition) on the Club Level and in all suites before the 2005 Pre-Season and no less often than every three (3) years thereafter; (xix) servicing and replacement (as reasonably necessary) of suite ice makers and refrigerators; (xx) replacement of suite ceiling tiles stained or damaged by leaks from concrete joints or otherwise and (u) maintaining the Stadium sound system and television monitors. The manner in which the City discharges its maintenance obligations under this Section 11(a), directly or through third parties (e.g. the Concessionaire), including the amount of expenditures for maintenance, shall be in the sole discretion of the City, except as otherwise expressly set forth in Section 11(c) below. The Chargers shall have the right (but not the obligation) to notify the City in writing no later than one hundred eighty (180) days prior to the start of any Regular Football Season of any maintenance or repairs it believes is necessary or appropriate for the City to meet its obligation pursuant to this Section 11(a); however, no such notice or the failure of the Chargers to give such notice shall diminish the City's maintenance obligations under this Agreement or create any liability for the Chargers with respect to the performance or non-performance of such maintenance by the City.

(b) Indemnity. The Chargers shall not be liable to the City or any third party with respect to any condition of the Stadium or Stadium Premises (not caused by the Chargers) and the City shall defend and indemnify the Chargers with respect thereto pursuant to the provisions of Section 18(b) of this Agreement. Except as expressly set forth in the preceding sentence, the Chargers' sole remedy with respect to maintenance and repair matters shall be to seek specific performance by the City pursuant to the arbitration provisions of Section 32(a) of this Agreement (including appellate review as set forth therein), and the Chargers expressly waive any right (1) to seek monetary or other damages against the City, and (2) to terminate this Agreement (except as expressly set forth in Sections 4(d) or 4(e) of this Agreement).

(c) Minor and Emergency Maintenance. With respect to routine maintenance pursuant to Section 11(a) that the Chargers reasonably believe is required and must be completed before the next Home Game, if the Chargers make a maintenance request to the City at least three (3) days prior to such Home Game, the anticipated cost of which does not exceed \$15,000 (subject to an annual increase of four percent (4%) commencing with the 2009 Regular Football Season, i.e., \$15,600 in 2009), and the City fails to respond to the Chargers within five (5) hours after the maintenance request or thereafter fails to promptly undertake such maintenance, the Chargers shall have the right to undertake such maintenance.

In the event of an emergency (i.e. the health or safety of persons or property is jeopardized), the Chargers shall not be required to deliver any prior notice to the City before undertaking maintenance or repair, but may immediately undertake such maintenance or repair, and shall give the City notice thereof as soon as possible. In the event the Chargers, under the circumstances described in this Section 11(c), incur costs performing such maintenance, the City shall reimburse the Chargers' out-of-pocket costs so incurred, but for no general damages. Such reimbursement shall be paid within thirty (30) days following receipt of the Chargers' statement setting forth the out-of-pocket costs incurred by the Chargers. Except as set forth in this Section 11(c), the Chargers shall have no right to undertake maintenance at the Stadium and seek reimbursement from the City of out-of-pocket costs so incurred in damages.

1.10 Chargers' Records. The Parties agree that Section 21(a) of the Agreement concerning the maintenance of records by the Chargers and the City's rights to receive statements relating thereto and to audit such records shall only apply with respect to records relating exclusively to (a) amounts paid for admission to Post Season Games, taxes paid on said amounts, refunds of said amounts, and Trade-Outs and (b) credits taken against consideration payable to the City by the Chargers. The Chargers shall have no obligation to maintain or deliver information relating to, or permit the audit of, any records relating to anything other than the foregoing.

1.11 Arbitration. Section 32(a) of the Agreement is amended by deleting said section and its caption, and replacing them as follows:

(a) **California Law; Arbitration.** This Agreement shall be deemed to be made and shall be construed in accordance with the laws of the State of California. Any controversy or claim relating to or arising under this Agreement, including any controversy concerning the arbitrability of an issue, shall be submitted to binding arbitration in the City of San Diego before a panel of three neutral arbitrators (collectively, the "Arbitrators" and, individually, an "Arbitrator") selected as hereinafter provided. Within thirty (30) days after the date of this Agreement the Parties shall jointly select a presiding Arbitrator (the "Presiding Arbitrator") and an alternate Presiding Arbitrator. If within such thirty (30) day period the Parties are unable to make either or both selections, either Party may apply to the Superior Court of the State of California, County of San Diego ("San Diego Superior Court") for such appointments.

Within fifteen (15) days following the date of a Party's notice to the other Party that it wishes to arbitrate a controversy or claim (the "Arbitration Notice"), the Presiding Arbitrator shall select two additional Arbitrators (who are neutral, impartial and independent of the Parties within the meaning of the Rules (as defined below)).

In conducting such arbitration, the Parties and the Arbitrators shall follow the Commercial Rules of the American Arbitration Association (“AAA”) then in effect (the “Rules”), except (i) such arbitration shall be administered by the Presiding Arbitrator and not by AAA, (ii) if the controversy or claim that underlies such arbitration relates to maintenance, repair, or the physical condition of the Stadium, then “Rules” shall mean the Construction Industry Arbitration Rules rather than the Commercial Rules of the AAA and each of the Arbitrators other than the Presiding Arbitrator shall be on the then-current National Roster of Neutrals maintained by the AAA (expressly excluding members of any San Diego regional Large Complex Construction Disputes panel) with construction and engineering training or experience that is relevant to such controversy or claim (or, if not on such National Roster of Neutrals, shall have comparable expertise), and (iii) to the extent the provisions of this Section 32(a) are inconsistent with the Rules, the provisions of this Section 32(a) shall govern. The Arbitrators shall apply California substantive law and shall allow reasonable discovery. The Arbitrators shall have the power and jurisdiction to order all remedies available at law or equity, including specific performance and injunctive relief, and shall issue a written statement of decision stating the Arbitrators’ findings of fact and conclusions of law. Each Party to any arbitration shall bear its own attorneys’ fees and costs of witnesses. All other fees, costs and expenses of such arbitration shall be allocated between the Parties as determined by the Arbitrators. Prior to the selection of the Presiding Arbitrator, either Party may apply to the San Diego Superior Court for provisional or interim relief, including without limitation the appointment of neutral Arbitrators if three Arbitrators are not appointed in the manner specified above. After the Arbitrators have been selected, the Arbitrators shall have the sole jurisdiction to hear applications for provisional or interim relief. Any provisional or interim measure ordered by the Arbitrators may be immediately and specifically enforced by the San Diego Superior Court.

The Arbitrators’ issuance or denial of any preliminary injunction or final award shall be reviewable by an appellate arbitration panel comprising three new neutral appellate arbitrators selected in the same manner as the three Arbitrators chosen for such arbitration, with the alternate Presiding Arbitrator serving as the presiding appellate Arbitrator. A request by either Party for review of a decision of or award by the Arbitrators must be made within twenty (20) Business Days after the date of such decision of or award by the Arbitrators. Questions of law shall be reviewed de novo; the sufficiency of the evidence shall be reviewed under the “substantial evidence” test recognized by California law; discretionary rulings of the Arbitrators shall be reviewed for abuse. The Parties expressly consent to the jurisdiction of the San Diego Superior Court with regard to any matter brought before the San Diego Superior Court pursuant to this Section 32(a). In addition, the Parties expressly consent to the jurisdiction

of the San Diego Superior Court with regard to any matter brought before such court pursuant to this Supplement Number Eight. The Parties expressly consent to the exclusive use of arbitration (except as otherwise specifically permitted in this Section 32(a)) to resolve any controversy or claim relating to or arising under this Agreement, including any controversy concerning the arbitrability of an issue, and further acknowledge and agree that neither Party shall raise, and the arbitrators shall not consider, any objection to the use of arbitration (as opposed to a lawsuit) based upon any theory including, but not limited to, fraud in the inducement.

(b) Expedited Proceeding. With respect to any arbitration pursuant to Section 32(a), including appellate review, the Parties agree that their common objective is to resolve the controversies and claims at issue in the most expeditious manner possible without compromising the rights of either Party. Accordingly, the Parties agree that, as soon as reasonably possible after appointment, the Presiding Arbitrator shall meet with the Parties, and the Parties shall cooperate with the Presiding Arbitrator, to develop a schedule and case management order that implements the common objective of the Parties as set forth in the preceding sentence.

1.12 New Provisions. The Agreement shall be amended to include the following additional new Sections 39 and 40:

39. Franchise Name. During the term of this Agreement, the Chargers shall predominantly include “San Diego” as part of the Chargers’ name in public references (whether marketing, advertising, or otherwise), subject only to the requirements of the NFL and NFL Properties, LLC. In the event the Chargers breach the covenant set forth in this Section 39, then the City as its sole and exclusive remedy shall be entitled to seek specific performance and injunctive relief.

40. Specific Performance. The City acknowledges and agrees that, in those circumstances (if any) in which the Chargers have waived their right to seek monetary damages or other legal remedies, the Chargers’ remedy at law will be inadequate, and that it will be appropriate for the Chargers to seek specific performance of the City’s obligations. The City further acknowledges and agrees that the City’s performance of its maintenance obligations under this Agreement: (a) subject to the provisions of Section 4(d), 4(e) and 11 hereof, is mandatory, not discretionary, (b) has, along with the other terms of this Agreement, been agreed to voluntarily by the City; (c) forms a material part of the consideration to the Chargers hereunder, and that but for the City’s agreement to faithfully perform such obligations, the Chargers would not have entered into this Agreement, and (d) specific performance of the City’s obligations would not require continuous supervision by a court. Neither a failure by the Chargers to raise an objection to the performance of the City, nor the approval or

acquiescence of the Chargers to the City's maintenance plans or procedures shall preclude the Chargers from subsequently seeking specific performance of the City's obligations if the City fails to perform its obligations as required by the terms of this Agreement.

2. Treatment of Tax. The Chargers and the City acknowledge and agree that, except as otherwise provided by this paragraph 2, the provisions of Section 13 of the Agreement shall remain in full force and effect and that the Chargers shall continue to be entitled to a reimbursement or credit against consideration due or to become due to the City for certain taxes (the "Taxes") payable by the Chargers, as provided by Section 13 of the Agreement. Starting with the first Home Game in 2004 the Chargers may prorate the credit provided in Section 13 of the Agreement among the Home Games during each Regular Football Season in the following manner. For each Home Game the Chargers may take a credit equal to the total amount of tax credit to which the Chargers were entitled with respect to the preceding Regular Football Season divided by the number of Home Games (excluding Post-Season Games). If, following actual payment by the Chargers of the Taxes it is determined that the total credit taken by the Chargers for that Regular Football Season exceeds the credit the Chargers would otherwise be entitled to under Section 13, the Chargers shall pay the amount of the excess to the City within thirty (30) days following payment of such Taxes. If, following actual payment by the Chargers of the Taxes, the Chargers determine that the total credit taken by the Chargers for that Regular Football Season is less than the amount of the credit to which the Chargers would otherwise be entitled under Section 13, the Chargers may either offset the amount of the additional credit due from the next payment the Chargers are to pay the City, or require the City to reimburse the Chargers the amount of the additional credit due within thirty (30) days following notification thereof by the Chargers.

3. General Provisions.

3.1 Representations, Warranties and Covenants.

(a) Each Party represents, warrants and covenants to the other Party that it has all necessary power and authority to enter into this Supplement Number Eight and has taken all action necessary to consummate the transactions contemplated by this Supplement Number Eight and to perform its obligations hereunder, including having obtained, prior to the date of this Supplement Number Eight, any necessary consents from third parties, including (with respect to the Chargers only) any necessary consent from the NFL.

(b) The Chargers hereby represent, warrant and covenant to the City that all right, title and interest in and to all material assets, franchises, privileges and other property of Chargers Football Company, a California limited partnership (one of the original parties to the Original Agreement) were transferred, conveyed and assigned to Chargers Football Company, LLC, a California limited liability company, and that Chargers Football Company, LLC, a California limited liability company, has not transferred, conveyed or otherwise assigned any such material assets, franchises, privileges or other property to any third party.

(c) The last sentence of Section 7(a) of this Agreement is hereby deleted.

3.2 Long-Term Stadium Development. The Parties shall meet and confer on a mutually convenient basis to discuss the development of a proposal for the financing and development of a new stadium to be voted on by the general public. Neither Party is obligated to participate in the financing or development of a new stadium, and the Parties acknowledge that there is no assurance that (a) the Parties will arrive at a mutually satisfactory proposal, (b) such a proposal will be submitted to a public vote, or (c) if submitted, such proposal will be approved by the voting public.

3.3 Effect of Supplement. In the event of any inconsistency between the Agreement and this Supplement Number Eight, the terms of this Supplement Number Eight shall prevail. Except as expressly set forth herein, the terms and conditions of the Agreement and the rights and obligations of the Parties shall remain unmodified and in full force and effect. The Agreement, as supplemented and modified by this Supplement Number Eight, represents the entire agreement between the Parties hereto with respect to the subject matter thereof and supersedes all other written and oral agreements with respect to such subject matter.

3.4 Governing Law. This Supplement Number Eight shall be construed in accordance with, and the transactions described herein shall be governed by, the laws of the State of California as to all issues, including, without limitation, issues of validity, interpretation, effect, performance and remedies.

3.5 NFL Approval. The City acknowledges that approval of this Agreement by the NFL is a condition precedent to its effectiveness, notwithstanding that the Chargers have executed and delivered this Agreement to the City.

3.6 Amendments. This Supplement Number Eight may not be amended or modified, except in writing signed by the Parties hereto.

3.7 Headings. Section headings used herein are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Supplement Number Eight.

3.8 Capitalized Terms. Capitalized terms contained herein shall have the meaning assigned to them in the Agreement.

3.9 Counterparts. This Supplement Number Eight may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, and all of which shall together constitute but one and the same instrument.

3.10 Precedence of New Agreement. This Supplement Number Eight does not amend or modify any Ancillary Agreement. However, to the extent any term or provision of an Ancillary Agreement is inconsistent with any term or provision of this Agreement, the New Agreement shall control.

3.11 Effective Date. This Agreement shall be effective as of August 1, 2004.

IN WITNESS WHEREOF, this Supplement Number Eight is executed on the date first written above by The City of San Diego, acting by and through its City Manager, pursuant to Ordinance No. _____, authorizing such execution, and by the Chargers.

THE CITY OF SAN DIEGO

By: _____
P. Lamont Ewell
City Manager

CHARGERS FOOTBALL COMPANY, LLC,
a California limited liability company

By: _____
Dean A. Spanos
President / CEO

I HEREBY APPROVE the form and legality of the foregoing Supplement Number Eight this ____ day of July 2004.

CASEY GWINN, City Attorney

By: _____
Leslie J. Girard
Assistant City Attorney